

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**JEREMY FONTANEZ,**  
**Petitioner**

**vs.**

**TERRY O'BRIEN, et al.,**  
**Respondents**

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**CIVIL ACTION**

**NO. 14-6160**

**ORDER**

**AND NOW**, this 3rd day of June, 2015, upon careful and independent consideration of the petition for writ of *habeas corpus*, and after review of the thorough and well-reasoned Report and Recommendation of United States Magistrate Judge Marilyn Heffley, there being Objections thereto, IT IS HEREBY ORDERED that:

1. The petitioner's Objections are OVERRULED.<sup>1</sup>
2. The Report and Recommendation is APPROVED and ADOPTED.
3. The petition for writ of *habeas corpus* is DISMISSED as a second or successive petition.
4. There is no basis for the issuance of a certificate of appealability.

The Clerk of Court is directed to mark this case CLOSED for all purposes.

BY THE COURT:

/s/ Lawrence F. Stengel  
LAWRENCE F. STENGEL, J.

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<sup>1</sup> Despite the petitioner's objection to the contrary, his current petition is considered a second or successive *habeas* petition under 28 U.S.C. § 2244(b)(3)(A), as amended by the Antiterrorism and Effective Death Penalty Act of 1996. In November 2010, the district court approved a Report and Recommendation recommending that his first petition be dismissed as untimely. See Fontanez v. Holt, Civ. A. No. 10-cv-2877, Document #13. A dismissal based upon the statute of limitations is considered an adjudication on the merits for purposes of determining whether a subsequent petition is successive under the AEDPA. See Nash v. Beard, 2006 U.S. Dist. LEXIS 80218 (M.D. Pa. 2006) (citing Villanueva v. United States, 346 F.3d 55, 58 (2d Cir.2003)). Accordingly, I find that Judge Heffley's characterization of the current petition as a second or successive one is correct. The petitioner must seek an Order from the Court of Appeals authorizing the district court to consider any second or successive petition. Stewart v. Martinez-Villareal, 523 U.S. 637, 640 (1998).